HEALTH AND LIFE INSURANCE BENEFITS FOR RETIREES OF BANKRUPT RAILROADS

HEARING

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS,

FIRST SESSION,

ON

H.R. 5646

A BILL TO AMEND THE REGIONAL RAIL REORGANIZATION ACT OF 1973 TO REQUIRE CONRAIL TO MAKE PREMIUM PAYMENTS UNDER CERTAIN MEDICAL AND LIFE INSURANCE POLICIES, TO PROVIDE THAT CONRAIL SHALL BE ENTITLED TO A LOAN UNDER SECTION 211(h) OF SUCH ACT IN AN AMOUNT REQUIRED FOR SUCH PREMIUM PAYMENTS, AND TO PROVIDE THAT SUCH PREMIUM PAYMENTS SHALL BE DEEMED TO BE EXPENSES OF ADMINISTRATION OF THE RESPECTIVE RAILROADS IN REORGANIZATION

APRIL 5, 1977

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HEALTH AND LIFE INSURANCE BENEFITS FOR RETIREES OF BANKRUPT RAILROADS

TUESDAY, APRIL 5, 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2237, Rayburn House Office Building, Hon. Fred B. Rooney, chairman, presiding.

Mr. ROONEY. The bill which we will take up today is H.R. 5646. This bill amends the Regional Rail Reorganization Act of 1973: To require ConRail to make premium payments under certain medical and life insurance policies; to provide that ConRail shall be entitled to a loan under section 211(h) of such act in an amount required for such premium payments; and to provide that such premium payments shall be deemed to be expenses of administration of the respective railroads in reorganization.

Without objection, the text of H.R. 5646 will be inserted in the record at this point.

[The text of H.R. 5646 follows:]

95TH CONGRESS
1ST SESSION

H. R. 5646

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 1977

Mr. ROONEY (for himself, Mr. METCALFE, Ms. MIKULSKI, Mr. FLORIO, Mr. SANTINI, Mr. MURPHY of New York, Mr. SKUBITZ, Mr. MADIGAN, Mr. LENT, Mr. RUSSO, and Mr. CARNEY) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Regional Rail Reorganization Act of 1973 to require ConRail to make premium payments under certain medical and life insurance policies, to provide that ConRail shall be entitled to a loan under section 211 (h) of such Act in an amount required for such premium payments, and to provide that such premium payments shall be deemed to be expenses of administration of the respective railroads in reorganization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (6) of section 303 (b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743 (b) (6)) is amended—

(1) by redesignating such paragraph (6) as paragraph (6) (A), and by redesignating clauses (A) and (B) in the first sentence thereof as clauses (i) and (ii), respectively; and

(2) by adding at the end thereof the following new subparagraph:

"(B) The Corporation shall make such premium payments as are necessary to maintain in effect all insurance policies providing medical or life insurance benefits to persons described in section 211 (h) (1) (viii) of this Act, and shall be entitled to a loan pursuant to section 211 (h) of this Act in an amount required for such premium payments. For purposes of such section 211 (h) and notwithstanding any other provision of Federal or State law, amounts required for such premium payments shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization.".

Mr. ROONEY. During the markup last fall of the Rail Transportation Improvement Act, I offered an amendment to include basically the same provisions as are in H.R. 5646. At that time, I was informed that the health and life insurance protection for about 1,600 preconveyance retirees were to cease because ConRail was not required to continue payment. I believed, then, and continue to believe, that depriving these persons of health and life insurance benefits would be an injustice that should not be tolerated.

I recognize that the continuation of health and life insurance benefits after retirement is not a practice of many companies in the industry and please understand that I am not taking a position on whether such benefits should be awarded to retirees. What is being proposed by this

bill is merely that these particular retirees—that is, those from the bankrupt railroads, that retired prior to conveyance to ConRail, had a provision in their contract that these benefits would continue to be paid after retirement.

We want to make sure that now, when they are not in a position to make alternative arrangements, that the original commitment is fulfilled.

The estates of the bankrupt railroads went to court arguing that the provision in the Rail Transportation Improvement Act requiring the continuation of these benefits should not have to be paid in the manner prescribed because they did not meet the prerequisite of coming within the definition of an administrative expense.

The court, in the instance of the case brought by the Erie-Lackawanna, agreed with this position. This bill, then, in my judgment, is designed to correct an injustice to the retirees by correcting the deficency in the drafting of the Rail Transportation Improvement Act. I certainly hope we are successful.

The bill clearly states that these costs are an administrative expense. In short, we are doing nothing more than has already been done for the retirees' pensions—these benefits are part of the pension and should be considered the same way in the act.

Our first witness is Mr. Donald C. Cole, vice president and secretary of the United States Railway Association.

STATEMENT OF DONALD C. COLE, VICE PRESIDENT AND SECRETARY, UNITED STATES RAILWAY ASSOCIATION, ACCOMPANIED BY EDWIN RECTOR, ASSISTANT GENERAL COUNSEL

Mr. COLE. Thank you, Mr. Chairman. I have with me Mr. Edwin Rector, assistant general counsel of the United States Railway Association, who has worked with our program quite a while and knows all of its complexities.

USRA is pleased to testify on H.R. 5646, a bill to amend the Regional Rail Reorganization Act so as to require ConRail to make premium payments under medical and life insurance policies covering railroad employees and retirees, and ConRail then would be entitled to a section 211(h) loan in the amount required for such premium payments. H.R. 5646 also would provide that such premium payments shall be deemed to be administration expenses of the respective railroads in reorganization.

The Railroad Revitalization and Regulatory Reform Act that was enacted into law in February 1976, added section 211(h) to the Regional Rail Reorganization Act of 1973. Section 211(h) requires ConRail to enter into agency agreements with the various estates of the bankrupt railroads to process, settle, and pay certain outstanding preconveyance obligations of the railroads in reorganization. The United States Railway Association is authorized by section 211(h) to loan ConRail money under certain conditions to make timely payment of the eligible obligations of the estates.

The Rail Transportation Improvement Act, enacted in October 1976, amended section 211(h) to add a new category of obligations eligible for loan funding by the association. The section now authorizes

loans for the amounts required to provide adequate funding for payment when due of medical and life insurance benefits for employees and retirees on account of their service with the railroad in reorganization prior to conveyance date. In order that this type of obligation be eligible for section 211(h) loan funding and payment by ConRail, however, the present law requires that the obligations be determined by the appropriate reorganization court to constitute "administration expenses" of the railroad in reorganization, and this is where your problem comes because the court overseeing the reorganization of the Erie-Lackawanna Railroad has determined that the estate has no legal obligation to continue to pay such premiums and that in the circumstances of the Erie-Lackawanna, it should not make such payments voluntarily.

The court also ruled that the insurance premiums for life and health insurance benefits do not have status as administration claims. The reorganization court's decision was affirmed by the Court of Appeals for the Sixth Circuit on January 18, 1977. Thus, as section 211(h) now stands, the Association cannot approve loans to fund the payment of premiums of health and medical insurance benefiting retired employees of the Erie-Lackawanna.

In contrast, the Penn Central estate has elected to continue paying such premiums. The outline of settlement between the Penn Central trustees and the United States that was submitted to the Penn Central's reorganization court on December 17, 1976, provides that the trustees' proposed plan of reorganization will treat as administrative expenses and discharge the section 211(h) loans that may be used to pay such premiums, provided they are recognized as obligations of the estate. The other bankrupt estates, such as the Reading and the C. & J., have not yet acted to resolve the issue as to whether or not the continued payment of such premiums would constitute admiinstration claims against the respective estates.

The proposed legislation, H.R. 5646, would amend the appropriate sections of the Rail Act to require that ConRail make premium payments necessary to maintain, in effect, medical and life insurance benefits to employees and retirees and that ConRail shall be entitled to section 211(h) loans in the amount required for such premium payments. The proposed legislation would also make a statutory determination that the amounts required for such premium payments shall be deemed to be expenses of administration of the estates.

While the association has no recommendation as to whether H.R. 5646 should be enacted, we feel it should be noted that enactment of the bill would insure that the medical and life insurance plans would be continued without risk of interruption or deprivation of the protection now relied on by the employees and retirees. If H.R. 5646 is enacted, the association would be prepared to approve such loans upon application by ConRail. After the making of section 211(h) loans to pay the premiums, the burden and risk of the litigation that the premium payments should be paid by the estates would be carried by the association rather than by the intended beneficiaries of the plans.

Mr. Chairman, I would like to conclude by saying that there is indeed some risk that all of the section 211(h) loans under H.R. 5646, if enacted, will not be recovered from the estates. Congress can certainly determine that the welfare of retired employees who have relied upon the health and medical insurance provided by railroads no longer

operating is worth that risk. If H.R. 5646 is enacted, the association will do all in its power to assert the Government's claim against those estates which fail to recognize the claim.

Mr. Chairman, I would be happy to receive your questions.

Mr. ROONEY. Thank you, Mr. Cole.

On page 3 of your testimony, you state that although the association has no recommendation as to the merits of the bill, you do note that the enactment of the bill would insure that the insurance plans could be continued without the risk of interruption. In subsequent testimony, this morning, we are going to hear that H.R. 5646 could result in a constitutional challenge because it is inconsistent with the holdings of the Sixth Circuit Court of Appeals regarding whether or not these benefits constitute an administrative expense.

I would like to know whether or not you believe there is a valid claim for a constitutional challenge in this case.

Mr. COLE. Mr. Chairman, the sixth circuit decision ends up with the conclusion that the claims would not be statutorily recognized as administrative claims, and therefore the possibility of a constitutional conflict could exist. That would mean, in the final result, that ConRail would be forgiven the loan. USRA would not be able to get the money out of the estates and the Federal Government would probably be in a position, basically, to recover a certain amount of the money.

So, we may be dealing on this question with the Erie-Lackwanna, and also we may be dealing with a couple of other railroads in reorganization in New York State, particularly the C. & J. and the Reading. All of these railroads would have different facts to review.

Looking at the decision of the sixth circuit, the court would have you believe through most of its opinion it was going to recognize these administrative claims. It is not until the last two pages of the decision that the sixth circuit decides they are not administration claims.

Those last two pages state that Congress nowhere defined administration claims in section 211(h) and the court therefore had to turn to the bankruptcy law. There it found these claims would not be administration claims. The court says, therefore, the Erie-Lackawanna trustees should not be obligated to continue further payment of premiums, particularly in view of the fact that the Erie-Lackawanna may not be able to pay all the administration claims.

If you raise the issue of whether or not the Erie-Lackawanna has enough money to pay the claims to a constitutional level, then we may have a constitutional problem. As you can see, there are caveats, and other addictum, in the sixth circuit decision. Because the bill, H.R. 5646, runs counter to the Erie-Lackawanna sixth circuit decision, we can assume the possibility of a constitutional question, although that may not turn out to be the case.

Ed, do you have anything on that?

Mr. RECTOR. It seems possible, certainly, that the issue is going to be raised. The Erie-Lackawanna does have a decision out of the Court of Appeals for the Sixth Circuit that would indicate now that if Congress enacts further legislation to impose that obligation on the estate, there is a real likelihood that that estate would raise a constitutional question. I couldn't predict how it would be resolved.

Mr. ROONEY. As you know, this bill provides that for the purpose of section 211(h), the amounts required by the bill should be deemed

to be administrative expenses. Mr. Cole, do you believe that this provision interferes with the oridinary Federal bankruptcy principle?

Mr. COLE. Mr. Chairman, I think that is related to your previous question on the constitutional issue. I would like Mr. Retcor to answer.

Mr. RECTOR. If the Erie-Lackawanna circumstance had not gone as far as it had—that is, where there is now a decision in an appellate court which, in effect, would be modified by the enactment of this legislation—I would say there would not be a substantial risk of any sort of later saying that Congress has gone beyond its authority under the Constitution to enact laws in bankruptcy. But given the fact there has now been a ruling by an appellate court on this particular issue, it may indeed raise an issue.

Mr. ROONEY. Thank you very much, gentlemen.

Our next witness will be Mr. John L. Sweeney, vice president, Government affairs, for ConRail.

You may proceed, Mr. Sweeney.

STATEMENT OF JOHN L. SWEENEY, VICE PRESIDENT, GOVERNMENT AFFAIRS, CONSOLIDATED RAIL CORPORATION, ACCOMPANIED BY A. CARL KASEMAN III, SENIOR TAX AND FINANCE COUNSEL, CONRAIL

Mr. SWEENEY. ConRail is grateful for the opportunity to present its views on H.R. 5646, a bill intended to take care of problems created by the lapsing of life and medical insurance policies of employees of the bankrupt railroads who retired prior to April 1, 1976.

ConRail recognizes the hardships which resulted from the lapsing of those policies. We also recognize the difficulties this subcommittee has encountered in seeking a means to alleviate those hardships. Above all, we recognize the concerns of those representing the retirees who, having been rebuffed by the courts, have turned to Congress for assistance.

With those recognitions in mind, we therefore appear today with several observations.

Our first comment relates to the present legal status of the retirees' claims, against the bankrupt estates, that such policies, and their premiums, are obligations of the bankrupt estates.

The bill would treat the amounts needed for the premium payments as valid administration obligations of the estates.

This treatment would be inconsistent with the holding of the Sixth Circuit Court of Appeals in the EL litigation on retiree life insurance. This inconsistency could result in a constitutional challenge to this provision, unless the legislative reports make it clear that the estates' obligations to repay the 211(h) loans would be subject to a determination that, under prior law, the benefit obligations were valid claims against the estates. If the determination were negative, in the final result in a particular case, the estate would not be liable: but ConRail would still be forgiven for the 211(h) loan in accordance with existing 211(h) provisions.

Because the bill does not specifically relate back to the preconveyance period, an inference might be drawn that a new liability was created by the legislation—instead of recognition of an existing liability. Such an inference would suggest that the provision could be constitutionally infirm.

Our second comment is to the fact that the bill would permit ConRail to obtain reimbursement for the premium payments under section 211(h).

This new provision necessarily requires long-term reliance not only on the continuance of that program but also on the adequacy of the maximum loan authorization under that program. Under the current administration of the program, which depends upon the availability of cash repayments of 211(h) loans by the Penn Central trustees to replenish that loan authorization, ConRail's entitlement to reimbursement for employee-related 211(h) payments is exposed to the long-term risk that such cash repayments will be delayed or not made at all. The retiree insurance premiums would increase the magnitude of this long-term risk.

Our final comment on that point, is the total amount of the premiums paid over the years will be much greater than would be an amount, which might also be authorized, to purchase the coverage for all years for a single initial premium.

Third, we would offer the comment that the bill, in the form introduced, would require ConRail to maintain in effect insurance policies providing medical or life insurance to persons described in section 211(h)(1)(A)(viii) of the Rail Act.

The reference to section 211(h) would be too broad in that it would include active employees and postconveyance retirees. These persons do not have, as a matter of contract law, any preconveyance accrued rights to coverage under medical and life insurance policies in their retirement years. ConRail does not maintain such coverage for its nonagreement retirees. I would add parenthetically we have adopted retirement benefits that we think may make it easier for the retirees. The bill as presently written might suggest that these persons do have such rights.

The bill further suggests that the insurance policies are still in effect, and that ConRail would be able to pick up the premium obligations as they become due. It is our understanding that in at least two cases (EL and CNJ), the insurance coverage has been terminated. Due to the limited size of the retiree groups in those cases, it may be extremely difficult to reinstate that insurance coverage. The bill should perhaps permit flexibility to obtain substitute coverage or, failing that, to provide for the benefits through a trust arrangement.

Provision should also perhaps be made to redress claims of those retirees whose insurance coverage was permitted to lapse by the bankrupt estate trustees.

We have prepared a redraft of the bill which the subcommittee may find useful. It seeks to resolve the problems discussed above. The redraft would:

—Extend only to preconveyance retirees.

—Give ConRail flexibility in determining the most feasible way of providing for the benefits, including the possibility that the benefit liabilities could be folded into its own group plans for active nonagreement employees.

—Extend to ConRail, if insurance coverage is or becomes unavailable, the ability to create a tax-exempt trust with the funds that otherwise would be used to purchase a single premium insurance policy for all remaining years of coverage.

—The redraft would also extend to individuals, whose benefit claims remain unpaid due to a postconveyance lapse in their insurance coverage, the right to be paid by ConRail with 211(h) funds.

—Protect ConRail by the provision for immediate 211(h) funding for all remaining benefit liabilities. This would reduce the risk to ConRail arising out of a long-term reliance on the availability of 211(h) funds and the repayment promises of the Penn Central trustees.

A copy of our suggested redraft is attached.

We would close this testimony with one additional observation. In our past transactions relating to 211(h) loans, we have been assured our administrative costs. We would hope the subcommittee might consider amending the bill to provide the same assurances.

Again, I want to thank the subcommittee for giving us the opportunity to comment on this measure.

Mr. ROONEY. Thank you, Mr. Sweeney.

At the outset of your testimony, you state, "Conrail recognizes the hardships which resulted from the lapsing of those policies." Later on, this morning, we will hear testimony from the Erie-Lackawanna estate to the effect that about half of the 1,150 noncontract retirees failed to pay the premiums necessary to continue coverage for their group's insurance policy.

As specific data has never been furnished to this subcommittee, it would be appreciated, Mr. Sweeney, if you could tell us how many retirees would be entitled to the benefits being provided by this bill? Similarly, how many of the policies have lapsed? Further, how much will the benefits to be provided by this bill cost each of the estates?

Perhaps your colleague would like to respond to that.

Mr. KASEMAN. Thank you, Mr. Chairman. These insurance arrangements were not covered by our agency's relationship with the estates and we had no basis on which to request information of the estates concerning the details of the coverage.

I am sure, however, that they would furnish us with the information if we did request it.

Mr. ROONEY. I wonder if you would, for the benefit of the committee, furnish this for the record.

Mr. SWEENEY. I would like to make a comment. The reason for the observation about the hardships is that we have heard of particular cases—a large number of them, although we can't quantify them for you—have been made known to us through their former colleagues of the company itself. There are cases where people were left without any coverage whatsoever, under extremely trying circumstances.

Mr. ROONEY. With regard to your comment on page 2, pertaining to the desirability of a single initial premium, do you believe this would require a change in the bill as it is presently drafted or could it be done administratively?

Mr. SWEENEY. I think the observation about the permiums seemed to refer consistently to premiums necessary to be made. It might require the kind of clarification we have inserted in here.

Carl, do you have any additional comments to make?

Mr. KASEMAN. No; I don't have anything to add to that.

Mr. ROONEY. With regard to the cost involved and benefits to be provided by the bill, what effect will this bill have on the maximum loan authority?

Mr. KASEMAN. Mr. Chairman, I believe that in previous testimony given to this subcommittee, and to the other committees of the Congress, provision was made, in the estimated amounts, needed for 211(h) funding.

Mr. ROONEY. Do you think that is sufficient?

Mr. KASEMAN. That is our present understanding, that it would be sufficient, although, that is based upon information that had been furnished to us in the context of the litigation with several of the estates in the special court.

But a year of liability has passed, presumably, and the liabilities have been reduced by that amount, so it would seem those numbers still should be reliable.

Mr. ROONEY. I have no further questions.

Thank you, gentlemen.

Our last witness will be Mr. Ralph S. Tyler, trustee of the Erie-Lackawanna Railway Company, Cleveland, Ohio.

You may proceed, Mr. Tyler.

STATEMENT OF RALPH S. TYLER, JR., TRUSTEE, ERIE-LACKAWANNA RAILWAY CO., ACCOMPANIED BY HARRY G. SILLECK, COUNSEL

Mr. TYLER. Thank you for the opportunity of appearing before you today. My cotrustee, Mr. Thomas F. Patton, has asked that I state that he joins in the views which I express today concerning H.R. 5646.

H.R. 5646 would amend section 303(b)(6) of the Regional Rail Reorganization Act of 1973 to provide that amounts required to pay the cost of continued coverage for life insurance benefits within the scope of section 211(h)(1)(viii) of the Rail Act for noncontract retirees of Erie-Lackawanna Railway Company (EL) and other railroads in reorganization shall be deemed to have administration claim status for the purposes of section 211(h) notwithstanding any other provision of law. The language used is like that added to section 303(b)(6) by the amendments to the Rail Act last October relating to pension plans.

We are uncertain as to the full purpose and intended effect of this bill. Controversy now exists as to the law enacted in October as to pension plans. Is it the intent to require that claims for the insurance benefits have the status of administration claims only for the purpose of the provisions in section 211(h) providing for the borrowing of funds by ConRail from United States Railway Association to meet insurance premium costs, or is it also the intent to provide that the claim of ConRail or USRA under section 211(h) for reimbursement from the Erie-Lackawanna estate for such borrowing will also necessarily have administration claim status?

If the latter is either the purpose or the effect of the bill, the trustees of Erie-Lackawanna vigorously oppose the proposal for the following reasons.

The Erie-Lackawanna Bankruptcy Court has already held such claims of the Erie-Lackawanna retirees for insurance coverage lack administration claim status. Its decision has been unanimously affirmed by a three-judge panel of the Court of Appeals for the Sixth Circuit.

A petition for rehearing of this affirmance by the court of appeals *en banc has* been denied, and the three-judge panel has itself denied rehearing.

Thus, if the bill were construed as mandating administration claim status of the ConRail-USRA claim for reimbursement against the estate, it would have the effect of retroactively changing a decision already made by the courts as to the bankruptcy and contract law applicable between the claimants to life insurance coverage, on the one hand, and other claimants to the estate, on the other hand.

Attention in this regard is called to remarks made on the floor of the House of Representatives on October 1, 1976, when the Rail Act was amended to bring life insurance claims within the ambit of section 211(h) of that act. It was expressly represented by Congressmen Rooney and Skubitz that in proposing such amendment it was not intended to interfere with the reorganization courts' determination of the validity and priority of such claims under ordinary contract law and Federal bankruptcy principles. The same remarks were made about the amendment then made to section 303(b)(6) with reference to pension plans, which H.R. 5646 would now extend to insurance coverage. Yet ConRail and USRA, we are advised, are taking the position that by reason of the language in section 303(b)(6) their claim for reimbursement against the estate as to borrowings for pension costs will have administration claim status regardless of what the courts say as to the validity and priority of such claims under ordinary contract and bankruptcy law principles; and if H.R. 5646 is passed we assume that ConRail and USRA would take the same position as to insurance coverage.

We are, of course, aware of the human concern for retirees who may have been counting on continued life insurance coverage to protect their families. But, unhappily, in a bankruptcy situation not all human concerns can be satisfied. There are, for example, numerous individual bondholders of Erie-Lackawanna who likewise may have been counting on their investment in Erie-Lackawanna to protect their families. They have received neither interest nor principal on their bonds since June 26, 1972, whereas the retirees' life insurance coverage was continued at the expense of the estate until October 1, 1976.

Such coverage on a group policy basis is still continuing for those retirees making premium payments on their own behalf since last October. Pursuant to the order of the bankruptcy court, we worked out arrangements with our insurance carrier under which group life insurance could be continued for the retirees at their own expense. Of the approximately 1,150 noncontract retires of Erie-Lackawanna as of October 1, 1976, only about 470 have failed to pay premiums necessary to continue coverage under Erie-Lackawanna's group insurance policy through March 31, 1977.

We also point out that even before October 1976, some retirees, in accordance with Erie-Lackawanna's life insurance plan, paid a portion of the premiums for their insurance coverage. H.R. 5646, if it is enacted, should make it clear that no funding under the Rail Act of that contributed portion is intended to be provided.

Moreover, the circuit court of appeals has noted that the Erie-Lackawanna estate may be unable to meet all administration claims, let

alone satisfy even partially the prebankruptcy bondholders and other claimants. There would thus be clear inequity to other claims in mandating administration claim status for a claim to reimbursement of a loan to pay claims which under existing bankruptcy law lack such status.

Whatever may be the constitutionality of making changes in bankruptcy priority rules designed to have general prospective applicability in the course of pending bankruptcies, it seems of dubious validity at best for the Congress to change a court decision already reached as to priorities in a particular pending bankruptcy proceeding.

The Erie-Lackawanna trustees, therefore, are advised by counsel that protection of the interests of other claimants to the estate will require a test in court of the constitutionality of H.R. 5646, if it is enacted in its present form and is interpretable as mandating administration claim status for the ConRail-USRA claim to reimbursement.

The way to continue the insurance protection for the retirees, and at the same time avoid any inequity to the other claimants to the Erie-Lackawanna estate, is to make the cost of life insurance coverage a "social cost" to be borne by the Government, not by the estate. This would recognize the reality of the purpose of the legislation, which is to meet a social concern regarded as of public importance. It is, therefore, one for which the public as a whole should pay, not that small portion of the public which happens also to have claims against the Erie-Lackawanna estate.

This result can be achieved, for example, by providing for funding through title V of the Rail Act. It might also be done if the language proposed for inclusion in section 303(b)(6) with reference to administration claim status were expressly not made applicable to any claim of ConRail or USRA for reimbursement against the estate. In any event, however it is accomplished. Congress should make it clear in any amendment of this character that no claim of any kind may be made against the estate for the cost, or reimbursement of the cost, of such insurance coverage, and similarly that no claim of 'other benefit" under the Rail Act to the estate may be made on account thereof in the pending valuation proceedings in the special court.

Thank you, Mr. Chairman. I would be glad to answer any questions.

Mr. ROONEY. Thank you.

You state there are approximately 1,150 noncontract retirees of the Erie-Lackawanna. Do you know the approximate cost of the benefits to be provided by this bill to the estate of the Erie-Lackawanna?

Mr. TYLER. By single premium?

Mr. ROONEY. Yes.

Mr. TYLER. The only estimate we have is one which we obtained, a tentative one, and entered in the reorganization court proceedings in July of last year, and that figure was $3.6 million to pay for a single premium policy for the retirees at that time. I am not at all sure that is still a valid figure. As of today, we have tried to get a current figure, but have not been able to obtain one. Now there are fewer living retirees to be insured, and second, there have been some rate increases.

Mr. ROONEY. You state on page 5 of your testimony—

The way to continue the insurance protection for the retirees and at the same time avoid any inequity to the other claimants to the EL estate, is to make the cost of life insurance coverage a "social cost" to be borne by the Government, not by the estate.

This is certainly the easy way out, having the Government to pay for these costs. I question, however, why you do not believe that this is a legitimate expense of the estate.

Mr. TYLER. Perhaps the best answer is it has been so decided in two courts. The reorganization court held that it was not and it was approved by the Sixth Circuit Court of Appeals.

Mr. ROONEY. They said it was not an administrative expense.

Mr. TYLER. That is right. The Sixth Circuit Court of Appeals said it was not an administrative expense. Most of the people involved, Mr. Chairman, retired prior to the inception of bankruptcy June 26, 1972. The insurance premiums were continued to be paid on an optional basis as long as the railway was operated. It was felt it bore some relationship in the operation of the railroad on the possibility of it being reorganized, as such. Now, 80 percent of our property has gone to ConRail. All we have left are the 20 percent of the rail lines and the nonrail properties, all of which we are proceeding to liquidate, and, of course, our valuation case in the special court.

Mr. ROONEY. We previously heard testimony that the Penn Central estate had elected to continue paying the premiums provided by this bill. Could you explain to the committee the basis for the different position taken by the Erie-Lackawanna estate from that taken of the Penn Central estate?

Mr. TYLER. I think there is a substantial difference in the estates. As far as the Penn Central is concerned, there is a substantial amount of property which they have to manage—not to liquidate—and they anticipate having an ongoing enterprise.

Our situation is the reverse of that. The greatest part of our property is in liquidation; our object is to get some money out of it to pay expenses and creditors. So, our posture is one, in substance, of liquidation, not of an ongoing enterprise. We are going to wind down, we hope, in 5 years.

Mr. ROONEY. I have no further questions. Thank you very much gentlemen.

That concludes our hearings for today.

[The following statement and letters were received for the record:]

STATEMENT OF HON. STANLEY N. LUNDINE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, members of the subcommittee, I am pleased to have the opportunity to submit my statement to the Subcommittee on Transportation and Commerce in support of H.R. 5646, legislation that will provide for payment of the life and medical insurance premiums of certain retired railroad workers. My support of this legislation centers around a very human problem that affects many railroad retirees in my district in the southern tier of New York State.

Following the April 1, 1976 conveyance of the bankrupt Northeast railroads to the Consolidated Railway Corporation, a dispute arose between ConRail and the bankrupt estates over responsibility for coverage of medical and life insurance premiums for certain non-contract retirees of the Erie-Lackawanna, the Lehigh Valley and the Penn Central railroads. These were insurance plans under which the railroads and their employees made joint contributions, and the premiums for the life insurance benefits were paid by the bankrupt estates. ConRail insisted that these plans were the obligation of the estates of the railroads in reorganization which created the plans. Officials of the bankrupt estates contended that responsibility for premium payments under these insurance plans should have been incorporated in the "social costs" of the rail reorganization.

On June 24, 1976, the Special Court established by the Regional Rail Reorganization Act dismissed the petitions of the trustees of these estates to require

ConRail to assume responsibility for life insurance policies. The Reorganization Court authorized the trustees of the bankrupt estates to continue payment of premiums for retired employees through September of 1976. After that date, many of the affected retirees were required to begin paying the entire premium in order to keep their insurance plans in force. This unanticipated financial burden has been a source of enormous hardship for many retired railroad workers, especially those living on limited incomes who could not easily obtain comparable coverage elsewhere.

My distinguished colleague from Pennsylvania, Mr. Fred Rooney, recognized the injustice of this situation and made certain that provisions were included in the Rail Transportation Improvement Act of 1976 to provide for the United States Railway Association to make necessary loan funds available to ConRail to continue payment of these premiums, with the estates repaying ConRail when funds became available. It was clearly the intent of Congress to assure that these retired railroad employees would be relieved of this unfair financial burden.

Because the funds are designated in the law as "loan" funds, release of these funds by the U.S.R.A. was contingent upon fulfillment of either one of two conditions. Either the bankrupt estates must have acknowledged that the claims to which the funds were to be applied were their rightful pre-conveyance obligation or the claim had to be certified as the estate's responsibility by the reorganization court. Unless one of these actions took place, the U.S.R.A. was not free to approve loans to fund the payment of medical and life insurance premiums.

Neither of these conditions were met. The trustees of the bankrupt estates declined to acknowledge their obligation to continue premium payments, and the reorganization court ruled on November 17, 1976, that funding for this insurance coverage was not a valid, pre-conveyance obligation of the bankrupt estates. This decision was affirmed by the Court of Appeals for the Sixth Circuit on January 18, 1977. The final decision by the Court of Appeals signaled another disappointing set-back in Congressional efforts to resolve this unfair situation.

I have taken the time to present this brief summary of the events that have occurred since the April 1, 1976 conveyance date in order to illuminate the state of continuing frustration, confusion and disappointment that many retired railroad workers have been subjected to over the past year, with still no resolution of this situation that directly impacts their lives.

H.R. 5646 specifies that the money necessary to pay these premiums shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, and will thereby precipitate the release of the necessary loan funds by the United States Railway Association.

The legislation before you today provides the vehicle to correct a serious injustice and to make a positive impact on the lives of retired individuals who have contributed many valuable years to the railroad industry. Enactment of H.R. 5646 may not be heralded as major legislation of the 95th Congress, but it will restore an important measure of dignity to the lives of some 1,600 retired railroad workers. I urge your speedy approval of this very important legislation. Thank you very much.

LEHIGH VALLEY RAILROAD COMPANY,
Bethlehem, Pa., March 31, 1977.

Re: H.R. 5646.

Hon. FRED B. ROONEY,
Chairman, U.S. House of Representatives, House Office Building, Annex 2, Washington, D.C.

DEAR FRED: I sympathize entirely with the purpose of the above referenced bill, which is to assure that group insurance premiums are paid for our retirees, and those of other railroads which have conveyed their properties to ConRail However, I feel that I must call to your attention your statement before the House in the debate on the Railroad Revitalization and Regulatory Reform Act of 1976, to the effect that you did not intend to interfere with ordinary Federal bankruptcy principles.

In view of the fact that a United States Court of Appeals has already held that the insurance premiums for retirees are not properly claims of administration, the proposed legislation will indeed upset established bankruptcy prin-

ciples, even though that result may not be intended. The effect will be to create a claim of administration where there was none before. I hope that your Committee will take this fact into account in your deliberations of HR 5646.

Our position with respect to the payment of insurance premiums for our own retirees remains the same as in our petition on the subject to our Reorganization Court.

Sincerely yours,

ROBERT C. HALDEMAN, *Trustee.*

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
Washington, D.C., April 5, 1977.

Hon. FRED B. ROONEY,
Chairman, House Interstate and Foreign Commerce Subcommittee on Transportation and Commerce, Washington, D.C.

DEAR CHAIRMAN ROONEY: The National Industrial Traffic League would like to take this opportunity to submit comments for the record of hearings on H.R. 5798, regarding the Office of Rail Public Counsel of the Interstate Commerce Commission.

The League has a long standing policy with reference to supporting public counsel at the Interstate Commerce Commission. The policy, B–4, *Functioning of the ICC*, reads in part, "The Interstate Commerce Commission should appoint an 'ombudsman' from its own staff as 'public counsel' and direct the 'Independent' participation of such 'public counsel' in each general rate increase (or other major case) of regional or national importance, or where a broad precedent is to be established."

The League testified in both the House and Senate hearings of the 94th Congress regarding the 4–R Act and submitted comments to Congress prior to mark-up of the legislation. In comments submitted on behalf of the League on November 26, 1975, former League President August Heist reiterated the membership's support of a public counsel in ICC stating "The League members have supported in the past and continue to support legislative proposals to establish within the ICC a 'public counsel' to act as an 'ombudsman' . . ."

Additionally, the League supports the authorization for appropriations for the Office of Rail Public Counsel.

The League strongly urges early action on an appointment of a Director to the Office of Rail Public Counsel of the ICC. We believe the time is long overdue for such an appointment.

Sincerely,

JAMES E. BARTLEY,
Executive Vice President.

[Whereupon, at 11:10 a.m., the subcommittee adjourned.]

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